

DR 98-012

GRANITE STATE ELECTRIC COMPANY

Retail Restructuring: Offer of Settlement

Order Granting Motion for Confidential Treatment

O R D E R N O. 23,227

June 14, 1999

In Order No. 23,041 (October 7, 1998), the New Hampshire Public Utilities Commission (Commission) approved, with certain conditions, a settlement proposal relating to the compliance obligations of Granite State Electric Company (GSEC) under the State's electric utility restructuring law, RSA 374-F. A detailed procedural history leading up to conditional approval of GSEC's offer of settlement is set forth in Order No. 23,041.

GSEC filed notice of its intent to change its supplier under "Transition Service 1" and, on December 23, 1998, filed an unredacted copy of a Transition Service Supply Contract (Contract) between GSEC and its new supplier, Constellation Power Source, Inc. (CPS), together with a Motion for Confidential Treatment, pursuant to N.H. Admin. Rule Puc 204.04 and Puc 204.06, relating to portions of the Contract it deemed proprietary.

Under the terms of the Contract, CPS supplies GSEC the power needed to meet GSEC's transition service load requirements for GSEC customers of record as of the retail access date, July 1, 1998, as well as new residential and small commercial

customers who requested service from GSEC within 120 days of the retail access date. GSEC referred to this supply, which had been previously provided by USGen New England, Inc. and a subsidiary of TransCanada Pipeline LTD. under the "backstop" provisions of the Amended Settlement Agreement, as "Transition Service 1".

On February 10, 1999, a technical session regarding the computation of the contract termination charge to GSEC was held at the Commission's office. No request for hearing or other challenge was filed.

In its motion, GSEC states: (1) that one or both of the parties to the Contract consider the information referenced in Article 25 of the Contract to be commercial and/or proprietary information; (2) that the parties to the Contract agreed to maintain as confidential these provisions of the Contract; (3) that the parties to the Contract had previously taken steps to avoid disclosure of this information; and (4) that disclosure of such information could adversely affect the business position of one or both of the parties in the future.

GSEC and CPS, in response to a Commission request for information setting forth evidence of harm that would result from disclosure, represented: (1) that CPS is a competitive energy supplier and New England Power Pool participant who competes with other suppliers in the provision of energy and energy services; (2) that the Contract was entered into following a competitive solicitation and negotiation process; (3) that the payment,

security and other terms referenced in Article 25 of the Contract may differ from corresponding terms CPS has with other entities with which it contracts in New England and could impair CPS's ability to negotiate different terms with other parties; and (4) that disclosure of these terms in this docket could chill the willingness of CPS and other suppliers to participate in the wholesale energy supply market in New Hampshire. Article 25 of the Contract refers to certain non-price terms and conditions of the Contract, notably concerning payment, security and actions in event of breach. Pricing terms under the Contract are not confidential and have been disclosed.

We review GSEC's motion by the standards set forth in Puc 204.06. Insofar as the information referenced in Article 25 contains terms which are commercially sensitive terms and proprietary, and the parties have otherwise protected the disclosure of this information, GSEC has demonstrated, in this instance, that the information, if made public, would create a competitive disadvantage that outweighs the benefit to the public of disclosure.

We therefore find that the information provided in the filing contains confidential information that meets the requirements of N.H. Admin. Rule Puc 204.06 (b) and (c). Based on GSEC's representations, under the balancing test we have applied in prior cases, e.g., Re New England Telephone Company

(Auditel), 80 NHPUC 437 (1995); Re Bell Atlantic, DE 97-171 (SGAT) Order No. 22,851 (February 17, 1998); Re EnergyNorth Natural Gas, Inc., Order No. 22,859 (February 24, 1998), we find that the benefits to GSEC of non-disclosure in this case outweigh the benefits to the public of disclosure. The Confidential Information should be exempt from public disclosure pursuant to RSA 91-A:5,IV and N.H. Admin. Rule 204.06.

Based upon the foregoing, it is hereby

ORDERED, that GSEC's Motion for Confidential Treatment is GRANTED; and it is

FURTHER ORDERED, that this Order is subject to the ongoing rights of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New
Hampshire this fourteenth day of June, 1999.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary